

USDC SCAN INDEX SHEET



ADAMS

GENERAL DYNAMICS

RCM

3:97-CV-00616

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ORIGINAL

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Attorneys for Defendant

GENERAL DYNAMICS CORPORATION

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

13 RICHARD D. ADAMS, MELANIE)
 14 ARGO, MICHAEL L. BAFFONE,)
 15 PHILIP P. BALISTRERI, ROBERT J.)
 16 BARRY, DONALD BATES, DIANE)
 17 BEDESSEM, GEORGE R. BELL, STEVE)
 18 BIRMINGHAM, JAMES VICTOR)
 19 BOWER, ROBIN DALE BOYD, JUAN)
 20 DANIEL BROOKS, PAUL Q. CHAU)
 21 SR., JAMES R. CLAUSEN,)
 22 GREGORY M. COULTER, CARLOS F.)
 23 CRUZ, ROBERT J. DABELOW JR.,)
 24 ALBERTA DANISH, ROBERT G.)
 25 DANZL, WAYNE F. DAVISON,)
 26 CLAIRE DELUCA, RICHARD)
 27 DELUCA, ARTHUR L. DILLEY, Z.)
 28 LYNNETTE DOHERTY, GARY R.)
 DRAY, PATRICIA L. DRIESLEIN,)
 SERGIO ESPINOZA, JOSEPH H.)
 EVOLA, MARK P. FERGUSON, IRENE)
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 HECTOR J. GARCIA, KATHLEEN)
 GARCIA, ALINDA M.)
 GIAN SIRACUSA, BILL GIFFORD,)
 MICHAEL J. GIORGETTA, JIM)
 GRECO, TERRENCE G. GREEN, JANE)
 GREGORY, GENNARO)
 GUASTAFIERRO, ALFRED M.)
 GUERRA, EDMUND GUERRERO,)
 NEAL C. HAAS, JAY P. HAESE,)
 DAVID W. HALLAS, ROBERT)
 HANSEN, BEV HARMAN, LEE A.)

Case No. '97 CV 0616E (AJB)

NOTICE OF REMOVAL OF ACTION
 UNDER 28 U.S.C. § 1441(b)
 (FEDERAL QUESTION AND
 DIVERSITY)

NR

HARPER, ROBERT J. HENETZ,
 RAYMOND HERRERA, ROSIE HICKS,
 DENNIS J. HONEYCUTT, DAVID R.
 JACKSON, DENNIS H. JACKSON,
 ADOLFO P. JARAMILLO, CORNELIUS
 (HENRY) JORDAN, DONALD
 KOLESAR, DONNA L. LONG,
 CHRISTOPHER LORE, VALERIE
 LUJAN, JAMES MCBRIDE, GIOVANNI
 MORETTA, DENNIA MOORE,
 TIMOTHY S. MOULD, DAVE G.
 MOYER, DONALD H. NAISH,
 VICKI D. NAISH, DEWEY G. NELSON,
 JOHN R. NEWMAN, RICHARD A.
 OSWALD, MICHAEL PLESE,
 ROBERT B. PORTER, FELICITAS
 QUITANIA, RENARD B. REID,
 TIMOTHY RICHARDSON, NORMA
 RICHMAN, RAYMOND ROBERTS,
 JOHN ROBUTKA, RALPH RUBIO,
 DOMINGO SANCHEZ, BERYL G.
 SCOTT, DONNAL L. SHUFFLER,
 PETER A. SHURKO, JACK SINNOTT,
 PRINTES L. SMITH, ROBERT A.
 SMITH, RICHARD C. SMITH, GLENN
 SPANGLER, RICHARD STURTZ,
 ERIC H. TAUBENBERGER, JANE E.
 TIERNEY, KATHLEEN TRAVIS,
 DIEGO TREVINO, KENT VIAN,
 RONALD E. WALTERS, FRANK D.
 WELLER, KENNETH WILSON,
 REBECCA D. WILSON, JOHN H.
 WINES, STEVE WINTERS, DAVID J.
 WYDYSH,

Plaintiffs,

v.

GENERAL DYNAMICS
 CORPORATION, and DOES 1 through
 50, inclusive,

Defendants.

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 PLEASE TAKE NOTICE that Defendant General Dynamics Corporation,
3 ("General Dynamics") hereby removes to this court the state court action described below:

4 1. On March 10, 1997, a complaint was filed in the Superior Court of the
5 State of California in and for the County of San Diego, entitled Richard D. Adams, et al.
6 v. General Dynamics Corporation, as Case No. 708719, a copy of which is attached
7 hereto as Exhibit "A."

8 2. The first date upon which General Dynamics had notice that this complaint
9 was filed was on March 13, 1997. General Dynamics has not been served with a
10 summons and a copy of the complaint.

11 3. This action is a civil action of which this court has original jurisdiction
12 under 28 U.S.C. § 1331, and is one which may be removed to this court by General
13 Dynamics pursuant to the provisions of 28 U.S.C. § 1441(b) in that the exclusive remedy
14 for the allegations in the complaint, if any, is under the Fair Labor Standards Act (FLSA),
15 29 U.S.C. §§ 201 et seq.

16 4. General Dynamics is informed and believes that Plaintiffs in this action
17 were at the time of the commencement of this action, and at the time of the filing of this
18 Notice of Removal, citizens and residents of the State of California and other states, with
19 the exception of Delaware or Virginia.

20 5. General Dynamics was, at the time of the filing of this action, and still is, a
21 corporation incorporated under the laws of the State of Delaware, having its principal
22 place of business in the State of Virginia.

23 6. In paragraph 4 of the complaint, Plaintiffs allege fictitious parties "DOES 1
24 through 50." General Dynamics does not know their identity or their citizenship.
25 Complete diversity exists among all of the non-fictitious parties and pursuant to 28 U.S.C.
26 § 1441(a), the presence of nondiverse fictitious parties does not destroy diversity for
27 purposes of removal.
28

1 7. This action is a civil action of which this court has original jurisdiction
2 under 28 U.S.C. § 1332, and is one which may be removed to this court by General
3 Dynamics pursuant to the provisions of 28 U.S.C. § 1441(b) in that it is a civil action
4 between citizens of different states and General Dynamics is informed and believes that
5 the matter in controversy exceeds the sum of \$75,000 in the aggregate and as to each
6 plaintiff.

7 8. Less than 30 days have elapsed since this action became removable to this
8 court. 28 U.S.C. § 1446(b).

9 WHEREFORE, General Dynamics gives notice of removal of this action, and
10 removes this action, from the Superior Court of the State of California to the United
11 States District Court for the Southern District of California pursuant to 28 U.S.C.
12 § 1441(b).

13 DATED: April 7, 1997

14 MAZZARELLA, DUNWOODY, WILSON & PETTY LLP

15
16
17 By:



CLAUDETTE G. WILSON

LISA T. SCHROEDER

Attorneys for Defendant

GENERAL DYNAMICS CORPORATION

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CIVIL DIVISION

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KENNETH E. MARTONE
CLERK - SUPERIOR COURT
SAN DIEGO COUNTY, CA

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\$185.00

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 SERGIO ESPINOZA, JOSEPH H. EVOLA,
 MARK P. FERGUSON, IRENE ALISEA-
 FRETZ, RICCI FRETZ, HECTOR J.
 GARCIA, KATHLEEN GARCIA,
 ALINDA M. GIANIRACUSA, BILL
 GIFFORD, MICHAEL J. GIORGETTA,
 JIM GRECO, TERRENCE G. GREEN,

CASE NO. **00708719**

COMPLAINT FOR DAMAGES

- (1) FRAUD AND DECEIT — FALSE PROMISE;
- (2) INTENTIONAL MISREPRESENTATION;
- (3) NEGLIGENT MISREPRESENTATION; AND
- (4) CONCEALMENT

EXHIBIT A

1 JANE GREGORY, GENNARO)
 GUASTAFIERRO, ALFRED M. GUERRA,)
 2 EDMUND GUERRERO, NEAL C. HAAS,)
 JAY P. HAESE, DAVID W. HALLAS,)
 3 ROBERT HANSEN, BEV HARMAN, LEE)
 A. HARPER, ROBERT J. HENETZ,)
 4 RAYMOND HERRERA, ROSIE HICKS,)
 DENNIS J. HONEYCUTT, DAVID R.)
 5 JACKSON, DENNIS H. JACKSON,)
 ADOLFO P. JARAMILLO, CORNELIUS)
 6 (HENRY) JORDAN, DONALD KOLESAR,)
 DONNA L. LONG, CHRISTOPHER LORE,)
 7 VALERIE LUJAN, JAMES MCBRIDE,)
 GIOVANNI MORETTA, DENNIS MOORE,)
 8 TIMOTHY S. MOULD, DAVE G. MOYER,)
 DONALD H. NAISH, VICKI D. NAISH,)
 9 DEWEY G. NELSON, JOHN R. NEWMAN,)
 10 RICHARD A. OSWALD, MICHAEL)
 PLESE, ROBERT B. PORTER, FELICITAS)
 11 QUITANIA, RENARD B. REID, TIMOTHY)
 12 RICHARDSON, NORMA RICHMAN,)
 RAYMOND ROBERTS, JOHN ROBUTKA,)
 13 RALPH RUBIO, DOMINGO SANCHEZ,)
 BERYL G. SCOTT, DONNA L.)
 14 SHUFFLER, PETER A. SHURKO, JACK)
 SINNOTT, PRINTES L. SMITH,)
 15 ROBERT A. SMITH, RICHARD C. SMITH,)
 16 GLENN SPANGLER, RICHARD STURTZ,)
 ERIC H. TAUBENBERGER, JANE E.)
 17 TIERNEY, KATHLEEN TRAVIS, DIEGO)
 TREVINO, KENT VIAN, RONALD E.)
 18 WALTERS, FRANK D. WELLER,)
 KENNETH WILSON, REBECCA D.)
 19 WILSON, JOHN H. WINES, STEVE)
 20 WINTERS, DAVID J. WYDYSH,)

21 Plaintiffs,

22 v.

23 GENERAL DYNAMICS CORPORATION,
 24 and DOES 1 through 50, inclusive,

25 Defendants.

GENERAL ALLEGATIONS

1
2 1. Defendant GENERAL DYNAMICS CORPORATION ("GENERAL
3 DYNAMICS") is a Delaware corporation qualified to do business in San Diego County,
4 State of California, and, at all relevant times, was doing business in San Diego County,
5 California.

6 2. Plaintiffs are informed and believe and thereon allege that GENERAL
7 DYNAMICS owns/owned and controls/controlled a division of the company known as the
8 "Convair Division," and exercises/exercised substantial authority in devising and
9 implementing employment practices and policies at Convair. Any reference to Convair
10 includes GENERAL DYNAMICS as well.

11 3. Plaintiffs were employees of GENERAL DYNAMICS who worked at the
12 Convair facility at Lindbergh Field in San Diego and whom GENERAL DYNAMICS
13 improperly classified as "salaried exempt" during all or a portion of the period August, 1985
14 through January 5, 1996.

15 4. The true names or capacities, whether individual, corporate, associate, or
16 otherwise, of defendants DOES 1 through 50, inclusive, are unknown to plaintiffs, who
17 therefore sue said defendants by such fictitious names. Plaintiffs are informed and believe
18 and thereon allege that each of the defendants designated herein as a DOES is responsible
19 in some manner for the events and happenings herein referred to, and caused injury and
20 damages proximately thereby to the plaintiffs as herein alleged. Plaintiffs will seek leave
21 of court to amend this complaint to set forth the true names and capacities of such named
22 defendants when their identities become known to the plaintiffs.

23 5. Plaintiffs are informed and believe and thereon allege that at all times relevant,
24 each of the defendants was the agent, servant, representative, or employee of each of the
25 remaining defendants, and was at all times relevant acting within the course and scope of
26 such agency, service, or employment and with the knowledge, consent, permission, approval,
27 or ratification of each of the co-defendants in doing the things herein alleged. Further, the
28 tortious acts performed by all defendants, including DOES 1 through 50, were done in the

1 course and scope of their employment as representatives of GENERAL DYNAMICS and
2 were ratified and/or performed by an officer, director or managing agent of GENERAL
3 DYNAMICS.

4
5 **FIRST CAUSE OF ACTION**

6 **FRAUD AND DECEIT — FALSE PROMISE**
7 **(AGAINST ALL DEFENDANTS)**

8 6. Plaintiffs incorporate by reference each and every allegation set forth above as
9 if fully set forth here.

10 7. Beginning in at least August, 1985, and continuing throughout their
11 employment which ended when the Convair plant closed on January 5, 1996, GENERAL
12 DYNAMICS promised the plaintiffs that it would be law abiding and would pay the
13 plaintiffs correct and lawful wages according to laws governing additional compensation for
overtime hours worked by the plaintiffs.

14 8. GENERAL DYNAMICS also told the plaintiffs that they were not required to
15 — and in fact should not — accurately record all of the overtime hours the plaintiffs
16 worked.

17 9. These promises concerned a material matter, and at the time they were made
18 GENERAL DYNAMICS had no intention to perform these promises.

19 10. GENERAL DYNAMICS made these promises with an intent to defraud the
20 plaintiffs, that is, for the purpose of inducing plaintiffs to rely on them, or to act or refrain
21 from acting in reliance on them.

22 11. The plaintiffs were unaware of and in the exercise of reasonable diligence were
23 unable to discover GENERAL DYNAMICS' intention not to perform these promises. The
24 plaintiffs acted in reliance on GENERAL DYNAMICS' promises and were justified in that
25 reliance. GENERAL DYNAMICS further applied duress to plaintiffs in the form of threats
26 against their jobs, both with GENERAL DYNAMICS and in the aerospace industry, if they
27 asserted claims for overtime wages. The plaintiffs did not discover GENERAL
28 DYNAMICS' promises were false until less than three years before the date of the filing of

1 this complaint.

2 12. As a result of their reliance on GENERAL DYNAMICS' promises, the
3 plaintiffs have sustained damages. These damages include, but are not limited to, the
4 overtime wages the plaintiffs were not paid during the period August, 1985, through January
5 5, 1996, and related consequential damages, such as pre-judgment interest, lost retirement
6 benefits, additional employer Social Security contributions and similar benefits.

7 13. The conduct of GENERAL DYNAMICS and its agents and employees, and
8 each of them as described herein, was despicable and was carried on by GENERAL
9 DYNAMICS with wilful and conscious disregard for the rights of the plaintiffs. GENERAL
10 DYNAMICS was aware of the probable dangerous consequences of its conduct and wilfully
11 and deliberately failed to avoid those consequences. This conduct constitutes malice,
12 oppression and fraud such that the plaintiffs are entitled, pursuant to California Civil Code
13 §3294, to recover punitive damages in an amount sufficient to punish and set an example
14 of GENERAL DYNAMICS.

15
16 **SECOND CAUSE OF ACTION**

17 **FRAUD — INTENTIONAL MISREPRESENTATION**
18 **(AGAINST ALL DEFENDANTS)**

19 14. Plaintiffs incorporate by reference each and every allegation set forth above as
20 if fully set forth here.

21 15. The defendants represented to the plaintiffs that each plaintiff had viable career
22 opportunities at GENERAL DYNAMICS and that at all times GENERAL DYNAMICS
23 would be law abiding and would pay the plaintiffs correct wages according to the law.

24 16. The defendants' representations were false, because at the time the
25 representations regarding career opportunities were made, the company had already decided
26 it would be closing the Convair Lindbergh Field facility. Further, the representations
27 regarding being "law abiding" were false, because at the time those representations were
28 made, GENERAL DYNAMICS was knowingly, recklessly and wilfully violating wage and
hour laws as they applied to plaintiffs, among others.

1 17. GENERAL DYNAMICS made these representations knowing them to be false
2 or with reckless disregard for their truth or falsity and with an intent to defraud the
3 plaintiffs, that is, for the purpose of inducing the plaintiffs to rely on them and to cause the
4 plaintiffs to refrain from asserting their overtime wage claims.

5 18. The plaintiffs were unaware of and in the exercise of reasonable diligence
6 were unable to discover the falsity of the defendants' representations. The plaintiffs acted
7 in reliance on those statements and were justified in that reliance. GENERAL DYNAMICS
8 further applied duress to plaintiffs in the form of threats against their jobs, both with
9 GENERAL DYNAMICS and in the aerospace industry, if they asserted claims for overtime
10 wages. The plaintiffs did not discover GENERAL DYNAMICS representations were false
11 until less than three years before the date of the filing of this complaint.

12 19. As the result of the plaintiffs' reliance on the defendants' statements, the
13 plaintiffs have sustained damages.

14 20. The conduct of GENERAL DYNAMICS and its agents and employees, and
15 each of them as described herein, was despicable and was carried on by defendants with
16 wilful and conscious disregard for the rights of the plaintiffs. Defendants were aware of the
17 probable dangerous consequences of their conduct and wilfully and deliberately failed to
18 avoid those consequences. The conduct of defendants constitutes malice, oppression and
19 fraud such that the plaintiffs are entitled pursuant to California Civil Code §3294 to recover
20 punitive damages in an amount sufficient to punish and set an example of defendants.

21
22 **THIRD CAUSE OF ACTION**

23 **FRAUD — NEGLIGENT MISREPRESENTATION**
24 **(AGAINST ALL DEFENDANTS)**

25 21. Plaintiffs incorporate by reference each and every allegation set forth above as
26 if fully set forth here.

27 22. The defendants represented to the plaintiffs that each plaintiff had viable career
28 opportunities at GENERAL DYNAMICS and that at all times GENERAL DYNAMICS

1 would be law abiding and would pay the plaintiffs correct wages according to the law.

2 23. The defendants' representations were false, because at the time the
3 representations regarding career opportunities were made, GENERAL DYNAMICS had
4 already decided it would be closing the Convair Lindbergh Field facility or selling it to
5 another company. Further, the representations regarding being "law abiding" were false,
6 because at the time those representations were made, GENERAL DYNAMICS was
7 knowingly, recklessly and wilfully violating applicable wage and hour laws in California and
8 elsewhere.

9 24. Regardless of the defendants' actual belief when they made these statements,
10 the representations were made without any reasonable grounds for believing them to be true.

11 25. The defendants made these representations with an intent to induce the
12 plaintiffs to rely on them.

13 26. The plaintiffs were unaware of and in the exercise of reasonable diligence were
14 unable to discover the falsity of the defendants' representations. The plaintiffs acted in
15 reliance on those statements and were justified in that reliance. GENERAL DYNAMICS
16 further applied duress to plaintiffs in the form of threats against their jobs, both with
17 GENERAL DYNAMICS and in the aerospace industry, if they asserted claims for overtime
18 wages. The plaintiffs did not discovery GENERAL DYNAMICS' representations were false
19 until less than three years before the filing of this complaint.

20 27. As the result of the plaintiffs' reliance on the defendants' statements, the
21 plaintiffs have sustained damages.

22 **FOURTH CAUSE OF ACTION**

23 **FRAUD — CONCEALMENT**
24 **(AGAINST ALL DEFENDANTS)**

25 28. Plaintiffs incorporate by reference each and every allegation set forth above as
26 if fully set forth here.

27 29. The defendants concealed and suppressed material facts from the plaintiffs,
28 namely that the plaintiffs' careers at GENERAL DYNAMICS were short lived, at best,

1 because the decision had already been made (unknown to the plaintiffs) to either shut down
2 the Convair Division or sell it to another company. Further, the defendants concealed and
3 suppressed GENERAL DYNAMICS' knowing, wilful, reckless and active violation of laws
4 pertaining to the payment of overtime wages.

5 30. The defendants were under a duty to disclose those facts, but, instead,
6 intentionally concealed and suppressed these facts with an intent to defraud the plaintiffs.

7 31. The plaintiffs were unaware of and in the exercise of reasonable diligence were
8 unable to discover these concealed facts and would not have acted as they did if they had
9 known the concealed and suppressed facts. GENERAL DYNAMICS further applied duress
10 to plaintiffs in the form of threats against their careers if they asserted claims for overtime
11 wages. The plaintiffs did not discover the facts GENERAL DYNAMICS suppressed and
12 concealed until less than three years before the date of the filing of this complaint.

13 32. As the result of defendants' intentional concealment and suppression of facts,
14 the plaintiffs have sustained damages.

15 33. The conduct of GENERAL DYNAMICS and its agents and employees, and
16 each of them as described herein, was despicable and was carried on by defendants with
17 wilful and conscious disregard for the rights of the plaintiffs. Defendants were aware of the
18 probable dangerous consequences of their conduct and wilfully and deliberately failed to
19 avoid those consequences. The conduct of defendants constitutes malice, oppression and
20 fraud such that the plaintiffs are entitled pursuant to California Civil Code §3294 to recover
21 punitive damages in an amount sufficient to punish and set an example of defendants.

22
23 WHEREFORE, plaintiffs pray for a judgment as follows:


- 24 1. For general damages according to proof;
25 2. For special damages according to proof;
26 3. For back wages and all other damages which could have been recovered by the
27 plaintiffs for the defendants' violations of laws;
28 4. For attorneys' fees;

5. For prejudgment interest;
6. For punitive damages on the first, second and fourth causes of action;
7. For costs of suit herein incurred; and
8. For such other and further relief as the court deems just and proper.


DATED: March 9, 1997

MONAGHAN & WARREN

By:


BRIAN D. MONAGHAN
MICHAEL A. CONGER
Attorneys for all Plaintiffs except
Davison, H. Garcia, K. Garcia,
Honeycutt and Moore

DATED: March 9, 1997


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14 Attorneys for Defendant
15 GENERAL DYNAMICS CORPORATION

16 UNITED STATES DISTRICT COURT
17 SOUTHERN DISTRICT OF CALIFORNIA

18 RICHARD D. ADAMS, MELANIE)	Case No.
19 ARGO, MICHAEL L. BAFFONE,)	
20 PHILIP P. BALISTRERI, ROBERT J.)	DECLARATION OF SERVICE BY
21 BARRY, DONALD BATES, DIANE)	MAIL
22 BEDESSEM, GEORGE R. BELL, STEVE)	
23 BIRMINGHAM, JAMES VICTOR)	
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 WINES, STEVE WINTERS, DAVID J.)
 WYDYSH,)

Plaintiffs,

v.

GENERAL DYNAMICS
 CORPORATION, and DOES 1 through
 50, inclusive,

Defendants.

I, the undersigned, declare under penalty of perjury that I am over the age of 18 years and not a party to this action. I am employed in the County of San Diego, State of California, in the office of a member of the Bar of this Court, at whose direction this service was made. My business address is Mazzarella, Dunwoody, Wilson & Petty, 550 West C Street, Suite 1050, San Diego, California 92101. I served the following documents:

**NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. § 1441(b)
(FEDERAL QUESTION AND DIVERSITY)**

on the parties in this action, addressed as follows:

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Attorneys for Plaintiffs except
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GARCIA, HONEYCUTT and
MOORE

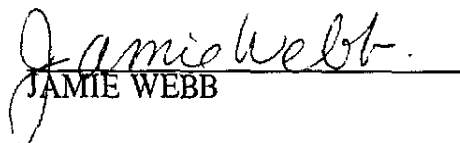
Terrence J. Rizzo
1450 Front Street
San Diego, CA 92101
Telephone: (619) 544-1800

Attorneys for Plaintiffs
DAVISON, H. GARCIA, K.
GARCIA, HONEYCUTT and
MOORE

By placing a copy in a separate envelope, with postage fully prepaid, for each addressee named above and depositing each in the U.S. Mail at San Diego, California on April 8, 1997.

I further declare that I am readily familiar with this firm's practice for processing mail for collection and mailing by the United States Postal Service, said practice being that mail is deposited with the United States Postal Service the same day it is placed for collection, and that the above-listed documents were deposited in the ordinary course of business.

Executed on April 8, 1997 at San Diego, California.


JAMIE WEBB

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by the rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of filing the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

RICHARD ADAMS, et al.

DEFENDANTS

GENERAL DYNAMICS CORPORATION

FILED
APR - 8 1997
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Monaghan & Warren
1450 Front Street
San Diego, CA 92101
(619) 231-0059

ATTORNEYS (IF KNOWN)

Mazzarella, Dunwoody, Wilson & Petty LLP
550 West C Street, Suite 1050
San Diego, CA 92101
(619) 236-9600

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY

29 U.S.C. Section 201

V. NATURE OF SUIT

(PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWW/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 28 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Other			

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 Original Proceeding
☒ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

April 7, 1997

LISA T. SCHROEDER

UNITED STATES DISTRICT COURT